

SENATE JOINT RESOLUTION NO. 23

INTRODUCED BY ELLIOTT, HENDRICK, LAIBLE, MCGEE, PARKER, TESTER, WANZENRIED,
PETERSON

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AFFIRMING THE LEGISLATURE'S DESIRE TO BE CONSULTED ON THE PROVISIONS OF INTERNATIONAL TRADE AGREEMENTS; AND REQUESTING MONTANA'S CONGRESSIONAL DELEGATION TO PROMOTE PROTECTIONS FOR MONTANA AND THE BEST INTERESTS OF MONTANA IN THE NEGOTIATION OF THESE AGREEMENTS.

WHEREAS, the Constitution of the United States of America reserves powers to the states that it does not grant to the nation and local governments also have autonomy over those powers not reserved to the state under the Montana Constitution; and

WHEREAS, existing trade agreements, such as the North American Free Trade Agreement (NAFTA), and proposed agreements, such as the Free Trade Area of the Americas (FTAA) and the Central American Free Trade Agreement (CAFTA), grant powers that affect lawmaking authority of state and local governments but do not require a supermajority vote of the U.S. Senate to ratify and cannot be amended as is the case with treaties before the U.S. Senate; and

WHEREAS, NAFTA and CAFTA enable individual foreign investors to sue governments for expropriation of profits, giving individual foreign investors greater rights in the United States than are granted to United States citizens by the Constitution; and

WHEREAS, trade negotiations under the General Agreement on Trade in Services (GATS) could affect Montana's ability to operate or regulate electricity, prescription drug programs, insurance, higher education, water resources, and other essential services; and

WHEREAS, the National Conference of State Legislatures, the International Municipal Lawyers Association, the National Association of Counties, the National Association of Attorneys General, and various state legislators from Idaho and California have sent letters to the U.S. Trade Representative expressing these concerns and have received little response; and

WHEREAS, these agreements might compromise the sovereignty and economic well-being of the State of Montana because:

(1) a NAFTA tribunal has held that Canadian softwood imports do not pose a threat of injury to U.S. producers;

(2) the Economic Policy Institute has determined that 1,700 Montana jobs have been lost because of NAFTA;

(3) the viability of Montana's agricultural economy and family farms and ranches are compromised by excessive competition from low-priced imported agricultural products; and

(4) Montana's energy laws concerning a default supplier, quotas from renewable energy sources and preferential tax treatments given to those energy sources, and preferential treatment to in-state providers of electrical generation and regulation of energy contracts may not comport with U.S. trade commitments to "open markets";

WHEREAS, these international agreements might affect the ability of Montana to regulate its oil and gas royalties and use purchase preferences in Montana's procurement laws; and

WHEREAS, the U.S. Trade Ambassador's State Point of Contact has failed to create a clearly marked channel for two-way communications as it was meant to; and

WHEREAS, Montanans are committed and prepared to treat foreign firms that do business in Montana in a nondiscriminatory fashion under a standard based on the Commerce and Foreign Commerce Clauses of the U.S. Constitution, yet Montanans are neither prepared nor willing to accept a challenge to their sovereignty based on an arbitrary and unreasonable standard of discrimination.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana's Congressional Delegation be requested to take steps to ensure that:

(1) the Montana Legislature and other state legislatures are consulted by the United States Trade Representative before commitments are made to specific provisions in trade agreements; and

(2) legislation implementing any new trade or investment accord include appropriate protections for the states from federal lawsuits enforcing these agreements.

BE IT FURTHER RESOLVED, that Montana's Congressional Delegation is urged to defend the best interests of the State of Montana and Montana's local governments, the United States government, and the Constitution rather than the rights of foreign investors when voting on the ratification of any trade agreements.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor

1 of the State of Montana, Montana's Congressional Delegation, the United States Trade Representative, and the
2 President of the United States.

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